



THERESA CHANG
HARRIS COUNTY DISTRICT CLERK

FILED

08 MAR 24 PM 1:44

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

February 28, 2008

BY:

(Signature)

DEPUTY

**Honorable Irma E. Gonzalez, Chief Judge
United States District Court
Southern District of California
Courtroom 1, Fourth Floor
880 Front Street
San Diego, California 92101-8900**

'08 CV 0544 BTM JMA

**Re: Cause No.2005-34601; Marcy Berkley Dickey, Individually and a/n/f of Dashun Dickey
and Kristian Dickey vs. Metabolife International, Inc., et al; Pending in the 113th
Judicial District Court of Harris County, Texas**

Dear Madam;

The documents listed on the attached index are being transferred to your office for filing per the order of the judge in the 113th Judicial District Court of Harris County, Texas.

This file was mailed to your office, Certified Mail Receipt No. 7003 1680 0002 3333 5460.

Please return a file stamped copy of this letter acknowledging receipt of the transcript to:

Theresa Chang, District Clerk
Attn: Kellie Kitchens
Administrative Services
P.O. Box 4651
Houston, TX 77210-4651

Thank you,

(Signature of Kellie Kitchens)

Kellie Kitchens
Deputy Clerk
Administrative Services
713-755-6828

BTM (JMA)

CR

INDEX

Cause No. 2005-34601

**Marcy Berkley Dickey,
Individually and a/n/f of Dashun
Dickey and Kristian Dickey
vs.
Metabolife International, Inc., et
al**

**IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
113th JUDICIAL DISTRICT**

	<u>DATE FILED</u>	<u>DATE ORDER SIGNED</u>	<u>DESCRIPTION OF DOCUMENT</u>
1.		01/04/2008	ORDER TRANSFERRING TO: Honorable Irma E. Gonzalez, Chief Judge United States District Court Southern District of California Courtroom 1, Fourth Floor 880 Front Street San Diego, California 92101-8900 San Diego County, California
2.	05/23/2005		COURT'S DOCKET SHEET
3.	05/23/2005		PLAINTIFF'S ORIGINAL PETITION
4.	05/23/2005		Citation – Wal-Mart Stores, inc.
5.	05/23/2005		Citation – Rusche Properties I LLC by serving its registered agent E. V. Bonner, Jr.
6.	05/23/2005		Citation – Metabolife International, Inc. by serving the Secretary of State
7.	05/23/2005		Citation – Muscletech Research & Development, Inc by serving the Secretary of State
8.	05/23/2005		Citation Corporate – Anum Enterprises, Inc. by serving its registered agent Aftab Aziz -
9.	07/01/2005		Plaintiff's First Amended Original Petition and Requests for Disclosures
10.	07/21/2005		Defendant Anum Enterprises, Inc.'s Rule 216 Request

11. 07/27/2005 Original Answer of Defendant Wal-Mart Stores, Inc., Jury Demand of Wal-Mart Stores, Inc., Firm check filing fee, Certificate of Written Discovery Regarding Wal-Mart Stores, Inc.'s Requests for Disclosure to Plaintiff Marcy Berkley Dickey, Individually and as Next Friend of Dashun Dickey and Kristian Dickey.
12. 08/26/2005 Certificate of Written Discovery
13. 08/29/2005 Original Answer of Defendant Muscletech Research & Development, Inc., and Jury Demand of Muscletech Research & Development, Inc.
14. 08/30/2005 Certificate of Written Discovery
15. 08/31/2005 Certificate of Written Discovery
16. 09/02/2005 Notice of Partial Non-Suit of Wal-Mart Stores, Inc.
17. 09/02/2005 Notice of Partial Non-Suit of Muscletech Research Development, Inc.
18. 11/10/2005 Joint Motion to Abate and corresponding Order
19. 01/04/2008 Joint Motion to Life Abatement for the Limited Purpose of Transfer; and Order
20. 01/04/2008 Plaintiff Marcy Berkley Dickey, Individually and as Next Friend of Dashun Dickey and Kristian Dickey and Defendant Anum Enterprises, Inc.'s Joint Motion to Transfer Civil Action Pursuant to Mandatory Provisions of 28 U.S.C. § 157(b)(5)

CERTIFICATE

THE STATE OF TEXAS

COUNTY OF HARRIS

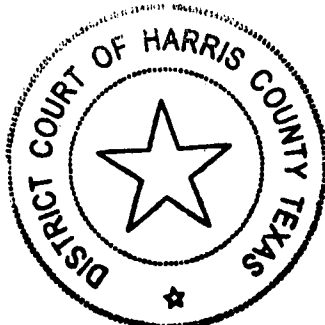
I, **THERESA CHANG**, Clerk of the District Court in and for Harris County, Texas, do hereby certify that the above and foregoing are true and correct copies of all the proceedings directed Sec. 155.207(a) to be included in the Transfer of the below referenced cause to The Honorable Irma E. Gonzalez, Chief Judge, United States District Court, Southern District of California, Courtroom 1, Fourth Floor, 880 Front Street, San Diego, California 92101-8900; County of San Diego, California.

**Marcy Berkley Dickey,
Individually and a/n/f of Dashun
Dickey and Kristian Dickey
vs.
Metabolife International, Inc., et
al**

NO. 2005-34601

as the same appear from the originals now on file of record in this office.

GIVEN under my hand and seal of said Court at office in the City of Houston, on the 28th day of February A. D., 2008.



THERESA CHANG,
CLERK DISTRICT COURT,
HARRIS COUNTY, TEXAS.

BY: 

Kellie Kitchens, DEPUTY CLERK

DA P-3
(2)J

CAUSE No. 2005-34601

MARCY BERKLEY DICKEY,
INDIVIDUALLY AND AS NEXT FRIEND
OF DASHUN DICKEY AND KRISTIAN
DICKEY

V.

METABOLIFE INTERNATIONAL, INC.,
ET AL

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IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
JAN 04 2008
Theresa Chang
District Clerk
By _____
Deputy

113TH JUDICIAL DISTRICTORDER


BE IT REMEMBERED that on this day came on to be heard Plaintiffs, MARCY BERKLEY DICKEY, INDIVIDUALLY and AS NEXT FRIEND OF DASHUN DICKEY and KRISTIAN DICKEY, and Defendant, ANUM ENTERPRISES, INC.'s Joint Motion to Transfer. After considering the Motion, the Court is of the opinion that said Motion is meritorious and should be in all good things granted. It is, therefore,

ORDERED that this case be transferred pursuant to the mandatory provisions of 28 U.S.C. § 157(b)(5), to the United States District Court for the Southern District of California. Further,

The Harris County District Clerk is ORDERED to assemble all pleadings and papers filed herein, including a copy of this Order, and deliver them by United States mail to:

The Hon. Irma E. Gonzalez, Chief Judge
United States District Court
Southern District of California
Courtroom 1, Fourth Floor
880 Front Street
San Diego, California 92101-8900

Signed ~~and Entered~~ this 5th day of Feb., 2008.



Judge Presiding

APPROVED:

HAYS, McCONN, RICE & PICKERING

BY: 

Bruce C. Gaible
State Bar No.: 07567400
Robin N. Blanchette
State Bar No.: 24045509
400 Two Allen Center
1200 Smith Street
Houston, Texas 77002
713) 654-1111 Fax (713) 655-9212

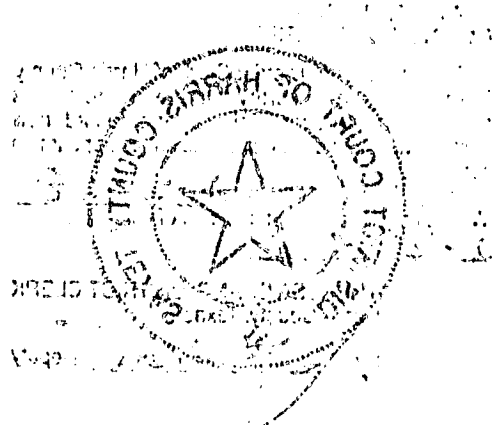
ATTORNEY FOR DEFENDANT,
ANUM ENTERPRISES, INC.

CRUSE, SCOTT, HENDERSON
& ALLEN, L.L.P.

BY: 

Stephen R. Bailey *(By Permission)
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2777 Allen Parkway 7th Floor
Houston, TX 77019
(713)650-6600 Fax (713)650-1720

ATTORNEY FOR PLAINTIFFS



2005-34601

FILED: 05/23/2005

GENERAL ORDER OF THE COURT 113TH

DICKEY, MARCY BERKELEY (IND AND ANF O
PLAINTIFFS

HENDERSON, JAY H.

Attorney

NATURE OF ACTION

DAMAGES (METABOLIFE 356)

VS.

METABOLIFE INTERNATIONAL INC

DEFENDANTS

Attorney

SURETIES ON COST BOND:

CIVCR103 Revised 10/23/00, CMCIF

Jury Fee Paid By:

LF108428

CRUSE SCOTT HENDERSON

SETTINGS

9/9/05 *Noted* NON-SUIT AS PER DECREE *Myer*

Stated NON-SUIT AS PER DECREE *Myer*

11/17/05

Abraham

ORDER SIGNED

2/5/08

Living Stay

ORDER SIGNED

2/5/08

TransCar Jurisdiction

CAUSE NUMBER _____

GENERAL ORDER OF COURT _____

JUDICIAL DISTRICT _____

STATE OF TEXAS
COUNTY OF HARRISTheresa Chang, District Clerk of Harris County,
Texas do hereby certify that the foregoing is a
true and correct copy of the original record now
in my lawful custody and possession, as appears in
record

In my office and filed on

5-23-05
2-21-08

Witness my official hand and seal of office, this

THERESA CHANG, DISTRICT CLERK
Harris County, TexasBy  Deputy

CAUSE NO. 2005-34601

MARCY BERKLEY DICKEY,
INDIVIDUALLY AND AS NEXT FRIEND
OF DASHUN DICKEY, AND
KRISTIAN DICKEY

Plaintiffs

VS.

**METABOLIFE INTERNATIONAL, INC.,
WAL-MART STORES, INC.,
MUSCLETECH RESEARCH
DEVELOPMENT, INC., AND
RUSCHE PROPERTIES I LLC**

Defendants

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION
AND REQUESTS FOR DISCLOSURES

COME NOW Plaintiffs MARCY BERKLEY DICKEY, INDIVIDUALLY AND AS NEXT FRIEND OF DASHUN DICKEY, AND KRISTIAN DICKEY, complaining of METABOLIFE INTERNATIONAL, INC., WAL-MART STORES, INC., MUSCLETECH RESEARCH AND DEVELOPMENT, INC., and RUSCHE PROPERTIES I LLC, Defendants, and for cause of action against the Defendants would show unto the Court as follows:

1.

1. Plaintiffs assert that this lawsuit should fall under Level 3 discovery, as set out in Rule 190.4 of the Texas Rules of Civil Procedure.

II.

2. Plaintiffs are resident citizens of Houston, Harris County, Texas, and reside at 1620 Enclave Parkway, #2901, Houston, Texas 77077. Plaintiffs were living in Texas at the time their causes of action accrued. Venue is proper in Harris County, Texas, because the Plaintiffs reside there and all or part of the causes of action alleged in this pleading occurred in Harris County, Texas.

3. Defendant, Wal-Mart Stores, Inc., is a retail products corporation that marketed the products Metabolife 356 and Hydroxycut. Wal-mart Stores, Inc., at all times herein mentioned, was and is a corporation organized and existing under the laws of a state other than the state of Texas. It has done and is doing business in the state of Texas, and this lawsuit arose out of Defendant's business in this state. Defendant is duly authorized to do business in the state of Texas. Said Defendant may be served with process by delivering Petition and Citation to:

Corporation Service Company
800 Brazos Street
Austin, TX 78701

4. Defendant, Metabolife International, Inc., manufactures and markets the product Metabolife 356. Metabolife International, Inc., at all times herein mentioned, was a corporation or other business entity organized and existing under the laws of the State of California. It has done and is doing business in the state of Texas, and this lawsuit arose out of Defendant's business in this state, but Defendant does not maintain a regular place of business in this state or a designated agent for service of process. Tex. Civ. Prac. & Rem Code §17.044 (b); Tex. Bus. Corp. Act art. 8.10(b); Tex. Rev. Civ. Stat. Ann. Art. 1396-8.09 (B). This Defendant may be served with process by

delivering Petition and Citation to the Secretary of State under Tex. Civ. Prac. & Rem. Code Sec. 17.044, and the Secretary of State, forwarding Petition and Citation to this Defendant's home office at:

Metabolife International, Inc.
5070 Santa Fe Street
San Diego, California 92109

5. Defendant, MuscleTech Research and Development, Inc., manufactures and markets the product Hydroxycut. MuscleTech Research and Development, Inc. was a corporation or other business entity organized and existing under the laws of Canada. It has done and is doing business in the state of Texas, and this lawsuit arose out of Defendant's business in this state, but Defendant does not maintain a regular place of business in this state or a designated agent for service of process. Tex. Civ. Prac. & Rem Code §17.044 (b); Tex. Bus. Corp. Act art. 8.10(b); Tex. Rev. Civ. Stat. Ann. Art. 1396-8.09 (B). This Defendant may be served with process by delivering Petition and Citation to the Secretary of State under Tex. Civ. Prac. & Rem. Code Sec. 17.044, and the Secretary of State, forwarding Petition and Citation to this Defendant's principal place of business as follows:

MuscleTech Research and Development, Inc.
7050 Telford Way, Unit 100
Mississauga, Ontario, Canada L5S 1V7

6. Defendant, Rusche Properties I LLC, is a convenience store and gas station that marketed the products Metabolife 356 and Hydroxycut. Rusche Properties I LLC, at all times herein mentioned, was and is an LLC organized and existing under the laws of the state of Texas. It has done and is doing business in the state of Texas and this lawsuit arose out of Defendant's business in this state. Defendant is duly authorized

to do business in the state of Texas. Said Defendant may be served with process by delivering Petition and Citation to Defendant's registered agent for service:

E. V. Bonner, Jr.
2433 Baldwin Blvd.
Corpus Christi, TX 78408

**III.
FACTUAL BACKGROUND**

7. This lawsuit has been made necessary by the conduct of the Defendants in connection with the design, manufacture, and marketing of various over-the-counter herbal concoctions, all of which possess a common denominator in that they contain "herbal" ephedrine or ephedrine alkaloids ("ephedrine"). These products are subject to the Dietary Supplement Health and Education Act of 1994, which limits the regulatory authority of the Federal Food and Drug Administration in verifying the safety and efficacy of ephedrine-containing dietary supplements. Thus, the dietary supplement industry is responsible for its own product design, safety and efficacy testing, marketing, and post-marketing safety surveillance.

8. Defendants, as members of the dietary supplement industry, aggressively and deceptively market "natural" products that contain ephedrine and other potentially hazardous substances. Defendants, individually and collectively, have participated in schemes to convince American consumers that chronic health conditions, including obesity, can be successfully treated in the long-term by the use of dietary supplements that contain ephedrine. Likewise, Defendants have marketed their "natural" products as being a safe and effective means of providing energy, exercise endurance, and stamina to individuals who consume these products. Thus, Defendants have convinced

thousands of American consumers that the benefits of using these ephedrine-containing products outweigh their risks.

9. Unfortunately, Defendants, individually and collectively, have failed in their responsibility to conduct adequate testing to fairly and reasonably establish the safety and efficacy of these ephedrine-containing products. Defendants' primary focus for testing has been short-term efficacy testing, and safety testing has largely been ignored. Defendants have designed these products so that they include alleged "natural" substances that have the propensity to cause harm to individuals who ingest these products. Further, Defendants have not conducted and do not conduct adequate post-marketing safety surveillance, which is an essential tool in the quest for determining the safety of products that are ingested by thousands of American consumers daily. In spite of numerous reports of serious side effects that are the likely result of using their products, including reports by the Food and Drug Administration, Defendants have failed to remedy the foregoing inadequacies and have continued to conduct business as usual, at the expense of the consuming public.

10. Defendants have knowledge of the potential side effects that may be attributable to their products. There are numerous published, credible reports of serious injury or death associated with the use of ephedrine-containing products. Rather than taking action to reasonably test their products before marketing them, to design their products to eliminate or minimize risks to consumers, and to market these "natural" dietary supplements in a responsible fashion, Defendants have engaged in a pervasive lobbying and marketing effort to convince the public and government representatives that the benefits of these products outweigh their risks.

11. The result of the foregoing acts of omission and commission is that Defendants have been enriched by millions of dollars through the sale of ephedrine-containing products that have not been adequately tested, properly designed, or monitored for safety and efficacy. Defendants have elevated their own profits above the health and well-being of the consumers who purchase their products. Further, when attempts have been made to implement reasonable regulatory changes to the dietary supplement industry, Defendants and others have lobbied against such changes since they know that meaningful scrutiny of their business practices would result in a loss of business profits. Hence, Defendants have acted irresponsibly and in disregard for the rights of the consumers who purchased their products.

12. Scientific developments over the past several years have revealed that herbal ephedra-containing products, such as Metabolife 356 and Hydroxycut are associated with serious and sometimes lethal risks to individuals who ingest these products. The "naturally occurring" ephedrine that is found in Metabolife 356 and Hydroxycut has been found to cause increases in blood pressure, increases in heart rate, and can cause heart failure, seizures, strokes, brain injury, and sudden death. Defendants did not adequately test for these potential adverse effects before promoting Metabolife 356 and Hydroxycut for widespread use, but learned of these potential adverse effects before Metabolife 356 and Hydroxycut were taken by Plaintiff. Instead of pulling Metabolife 356 and Hydroxycut from the market, or warning potential consumers, including Plaintiff, of the potential health risks and threats, Defendants kept silent and allowed Plaintiff to take Metabolife 356 and Hydroxycut and to have a brain aneurysm.

13. Plaintiff Marcy Berkley Dickey is a 31-year-old woman living in Harris County, Texas. Up until July 2003, she used ephedra-containing products manufactured, distributed and/or marketed by Defendants.

14. In July 2003, Marcy Berkley Dickey suffered a subarachnoid hemorrhage due to a brain aneurysm for which she underwent emergency brain surgery. Marcy Berkley Dickey remained hospitalized from July 11, 2003, until July 22, 2003. Prior to July 2003, she had no knowledge that the ephedrine-containing products manufactured and marketed by Defendants had the propensity to cause serious and life-threatening health conditions. On the contrary, when she took Defendants' products, Mrs. Dickey believed that these products were safe and natural and would not cause injury to her. Marcy Berkley Dickey acted as a reasonable and prudent consumer in her use of these products, and she ingested these products in a manner consistent with the labeling and marketed instructions that accompanied these products. It was not until a time subsequent to her brain hemorrhage that she first knew of a potential causal relationship between her medical maladies and the ephedrine-containing products. Thus, she acted as a reasonable and prudent individual and consumer in investigating and pursuing her legal claims against these Defendants when she discovered that there was a causal relationship between Defendants' ephedrine-containing products and her illness.

15. Prior to the time she took the ephedrine-containing products sold by Defendants, Marcy Berkley Dickey was a healthy woman. The medical and diagnostic testing and procedures conducted on Mrs. Dickey revealed no explanation for the brain aneurysm, other than the ephedrine-containing products manufactured and/or

distributed by Defendants. Further, the available scientific evidence reveals that products of this type have been associated with events of the nature suffered by Marcy Berkley Dickey. Thus, Plaintiffs allege that the ephedrine-containing products manufactured and marketed by Defendants were responsible, both individually and collectively, for the serious health condition and indivisible injuries from which Marcy Berkley Dickey suffers.

16. Plaintiff Kristian Dickey is Plaintiff Marcy Berkley Dickey's husband. Plaintiff Kristian Dickey has suffered from pecuniary damages, loss of consortium, and other damages as a result of the injuries sustained by Plaintiff Marcy Berkley Dickey.

17. Plaintiff Dashun Dickey is Plaintiff Marcy Berkley Dickey's son. Plaintiff Dashun Dickey has suffered from pecuniary damages, loss of consortium and other damages as a result of the injuries sustained by Plaintiff Marcy Berkley Dickey.

IV. CAUSES OF ACTION:

1. STRICT PRODUCTS LIABILITY - DESIGN DEFECT

18. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth here and further allege as follows:

- a. Metabolife 356 and Hydroxycut are products designed, formulated, manufactured, marketed, distributed, promoted, advertised, packaged, sold and/or supplied by these Defendants that were placed into the stream of commerce by these Defendants in a condition that was defective and unreasonably dangerous as designed, taking into consideration the utility of these products and the risks involved in their use.

- b. Metabolife 356 and Hydroxycut were unsafe for their intended and/or reasonably foreseeable purposes and uses at the time they were distributed, sold or supplied by Defendants because the known side effects and adverse consequences outweighed the benefits of these products, if any. Those side effects and adverse consequences include precisely the injuries suffered by Plaintiff.
- c. Metabolife 356 and Hydroxycut were defective because, for example, it combined ephedra (ma huang) and caffeine (guarana). Defendants knew such a chemical/herbal concoction had the propensity to cause injury. Metabolife 356 and Hydroxycut left Defendants' hands in this defective condition, and Metabolife 356 and Hydroxycut reached Plaintiff in the same condition.
- d. The defective condition of Metabolife 356 and Hydroxycut were a producing cause of the injuries sustained by Plaintiff.

2. STRICT PRODUCTS LIABILITY - MARKETING DEFECT

19. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth here and further allege as follows:

- a. These products were defective at the time they were placed into the stream of commerce due to a marketing defect. In the absence of adequate warnings and instructions, Metabolife 356 and Hydroxycut posed unacceptable risks to Plaintiff that were unknown and unknowable to her.

- b. Metabolife 356 and Hydroxycut were defective in marketing due to inadequate, false, misleading and inaccurate precautions, warnings, instructions, and/or labeling.
- c. These products were not accompanied by timely, accurate, adequate, necessary, required truthful and proper warnings, precautions, instructions and labeling regarding permanent and irreversible injury associated with the use of these products and the complications, consequences, severity, duration and potential for fatal effects of such injuries.
- d. Instead, the detail pieces, package insert, instructions, or label accompanying the products minimized and trivialized and, in fact, misled consumers regarding adverse effects associated with these products; the potential frequency, severity, and irreversibility of the harm from use of these products, and the potentially fatal consequences of taking these products.
- e. Defendants failed to provide the FDA and various state agencies, including the Texas Department of Health, with all the necessary and available information on these products, their contents and reports of Adverse Events in consumers. Defendants purposefully withheld information necessary to determine the adequacy of the label and the safety and efficacy of these products.
- f. The Metabolife 356 and Hydroxycut labeling knowingly misrepresented the efficacy and benefits of Metabolife 356 and Hydroxycut to Plaintiff.

- g. The labeling rendered these products defective in that it failed to give adequate warnings and instructions in a manner and form (1) that could reasonably be expected to catch the attention of a reasonably prudent person in the circumstances that these products were used; (2) that were comprehensible to the average user; and (3) that conveyed a fair indication of the nature, frequency, severity and extent of the danger.
- h. There was not a timely, adequate, and accurate disclosure of adverse reactions in the label, even though Defendants knew or should have known of such adverse reactions. The failure to give adequate instructions and warnings in an adequate manner rendered these products dangerous to any extent beyond that which would be contemplated by the ordinary consumer.
- i. These products were defective because the foreseeable and known risks exceeded the benefits claimed, suggested or truly associated with the design and formulation. Moreover, these products were more dangerous than an ordinary consumer would expect and far more dangerous than other means of weight control.
- j. There were numerous other reliable and effective methods of controlling weight that posed less risk.

3. BREACH OF WARRANTY

20. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth here and further allege as follows:

- a. Defendants expressly and impliedly warranted that Metabolife 356 and Hydroxycut were safe for their intended purpose.
- b. Defendants expressly and impliedly warranted that Metabolife 356 and Hydroxycut were all natural products.
- c. Defendants expressly and impliedly warranted that Metabolife 356 and Hydroxycut would provide energy.
- d. Defendants expressly and impliedly warranted that Metabolife 356 and Hydroxycut would enhance your diet.
- e. Defendants expressly and impliedly warranted that Metabolife 356 and Hydroxycut would increase your metabolism.
- f. Defendants expressly and impliedly warranted that Metabolife 356 and Hydroxycut had no side effects.
- g. Defendants expressly and impliedly warranted that Metabolife 356 and Hydroxycut would help consumers lose weight.
- h. Metabolife 356 and Hydroxycut did not conform to these representations. Instead, Metabolife 356 and Hydroxycut have high levels of serious side effects, including irreversible and life-threatening side effects, and this is what prompted the FDA to inquire and hold hearings on ephedra-containing products like Metabolife 356 and Hydroxycut.
- i. At the time Defendants marketed, sold and distributed Metabolife 356 and Hydroxycut for use by Plaintiff, these Defendants knew of the use for which these products were intended and expressly and impliedly

warranted these products to be of merchantable quality and safe and fit for such use.

- j. Plaintiff relied upon the skill and judgment of Defendants as to whether Metabolife 356 and Hydroxycut were of merchantable quality and safe and fit for their intended use.
- k. Contrary to such warranties, Metabolife 356 and Hydroxycut are not of merchantable quality or safe or fit for their intended use, because these products were and are unreasonably dangerous and unfit for the ordinary purposes for which they were used as described above.
- l. As a direct and proximate result of the breach of them, their express and implied warranties regarding the properties and qualities of Metabolife 356 and Hydroxycut, Plaintiff suffered personal injury.

4. MANUFACTURER/DISTRIBUTOR NEGLIGENCE

21. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth here and further allege as follows:

- a. Defendants have a duty to exercise reasonable care in the design, manufacture, sale or distribution of Metabolife 356 and Hydroxycut into the stream of commerce, including a duty to assure that Metabolife 356 and Hydroxycut did not cause users to suffer from unreasonable, dangerous side effects. These Defendants have failed to exercise ordinary care in the manufacture, sale, testing, quality assurance, quality control or distribution of Metabolife 356 and Hydroxycut into interstate commerce in that these Defendants knew or should have known that Metabolife 356

and Hydroxycut created a high risk of unreasonable, dangerous side effects, some of which are fatal.

b. The Defendants were negligent in the design, manufacture, marketing, testing, and sale of Metabolife 356 and Hydroxycut in that they:

- i. Failed to use due care in designing, manufacturing and marketing Metabolife 356 and Hydroxycut;
- ii. Failed to conduct adequate testing and post-marketing surveillance to determine the safety of Metabolife 356 and Hydroxycut;
- iii. Failed to provide adequate training to distributors for appropriate use of Metabolife 356 and Hydroxycut;
- iv. Failed to adequately warn individuals of the potential dangerous side effects of Metabolife 356 and Hydroxycut;
- v. In such other and further particulars as will be proven at trial.

c. The Defendants were negligent in the distribution of Metabolife 356 and Hydroxycut in that they:

- i. Failed to exercise ordinary care in the distribution of these products;
- ii. Failed to obtain adequate information about the products prior to distributing it to consumers;
- iii. Pleading in the alternative, failed to pass along instructions, warnings, adverse events associated with these products that were provided to them by the manufacturer.

- d. Despite the fact that Defendants knew or should have known that Metabolife 356 and Hydroxycut caused unreasonable, dangerous side effects which many users would be unable to remedy by any means, these Defendants continued to market Metabolife 356 and Hydroxycut to consumers, including Plaintiff, and all others similarly situated, when there were safer alternative methods of weight loss.
- e. Defendants' failure to adhere to the appropriate standard of care proximately caused the injuries to Plaintiff.

5. DECEPTIVE TRADE PRACTICES ACT VIOLATIONS

22. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth here and further alleges as follows:

- a. Plaintiff also seeks relief pursuant to TEX.BUS.COM.CODE. § 17.41, et seq., commonly known as the Deceptive Trade Practices and Consumer Protection Act (DTPA), and specifically § 17.46 and § 17.50.
- b. Marcy Berkley Dickey was a consumer of Metabolife 356 and Hydroxycut. Metabolife 356 and Hydroxycut are consumer goods.
- c. Defendants engaged in false, misleading, and deceptive acts in the distribution of Metabolife 356 and Hydroxycut in violation of TEX.BUS.COM.CODE. §17.46(5) [representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another].
 - 1. § 17.46(8) [disparaging the goods, services, or business of another by false or misleading representation of facts];

2. § 17.46(22) [representing that work or services have been performed on goods when the work or services were not performed].
- d. Defendants are liable under the DTPA for breach of warranty as outlined in § 17.50.
- e. Defendants are liable under the DTPA for their unconscionable actions and course of actions. Defendants took advantage of the consumer, Plaintiff's lack of knowledge, ability, experience, or capacity to a grossly unfair degree in violation of § 17.45(5).
- f. Further, Defendants committed unconscionable acts when they represented that these products had characteristics and benefits that they did not. Defendants failed to disclose information pertaining to these products that were known to Defendants at the time of the consumer transaction, and the failure to disclose the information was intended to induce Plaintiff to purchase and take these products when she would not have done so if the information had been disclosed.
- g. These violations of the Texas Deceptive Trade Practices Act were committed knowingly as they were committed with an actual awareness, at the time of the conduct, of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty.
- h. These violations, each of them, are a producing cause of Plaintiff's injuries.

- i. Plaintiffs, therefore, seek all damages recoverable under the DTPA; specifically, Plaintiffs seek all damages including but not limited to economic damages, mental anguish associated with the violations; costs, attorneys fees, prejudgment interest, and additional and/or treble damages.

6. DECEIT AND FRAUD

23. Plaintiffs incorporate herein by reference the allegations of the preceding paragraphs as if included herein.

24. Defendants made material representations to the general public and to potential users of Metabolife 356 and Hydroxycut, such as Plaintiff, that Metabolife 356 and Hydroxycut were "natural" and that they were a "dietary supplement" and told consumers that these products were safe.

25. Plaintiff Marcy Berkley Dickey reasonably relied upon such representations in deciding to use Metabolife 356 and Hydroxycut and, but for such representations of safety, she would not have used Metabolife 356 and Hydroxycut.

26. At the time the representations were made, they were false and Defendants knew they were false.

27. Defendants each also failed to disclose to Plaintiff that Metabolife 356 and Hydroxycut could cause serious health problems including brain aneurysms, brain hemorrhage and/or sudden death.

28. These omissions were material and induced Plaintiff to use Metabolife 356 and Hydroxycut. If she had been told that Metabolife 356 and Hydroxycut could cause serious health problems, including brain aneurysms, brain hemorrhage and/or sudden

death, she would not have used these products.

29. These omissions by each and every Defendant were material and intentional and they had the desired effect of inducing the continued use of the products by Plaintiff and millions of others.

7. COMPENSATORY DAMAGES

30. As a direct and proximate result of the negligence of each of the Defendants, Plaintiffs have sustained significant damages for which compensation is sought. First, as to Marcy Berkley Dickey, at the time of her brain hemorrhage, she was in excellent health, with a reasonable life expectancy. Marcy Berkley Dickey was a wage earner and provided financial support for her family. Prior to the time she took the Defendants' products, Mrs. Dickey was an industrious and energetic wife and mother. She performed numerous and usual tasks in and about her family residence and gave advice, counsel, comfort and care to her husband, son and family. Plaintiff Marcy Berkley Dickey has suffered actual damages as a result of the conduct and products attributable to the Defendants. Plaintiff Marcy Berkley Dickey is entitled to recover both direct/general damages and consequential/special damages that naturally and necessarily flow from the tortious conduct and products of the Defendants as would normally compensate for the loss, damage, and injury that is presumed to have been foreseen or contemplated by the Defendants as a consequence of the Defendants' behavior and products. Thus, Plaintiffs seek recovery for all damages available under Texas law, including intangible damages for pain, anguish, loss of consortium, and such other damages as may be proved at the time of trial.

31. As a result of the illness from which Marcy Berkley Dickey suffers, Plaintiff Kristian Dickey has suffered pecuniary damages including losses of care, maintenance, support, services, advice, counsel and contributions of a pecuniary value that he would, in reasonable probability, have received from his wife were it not for her medical condition. In addition, he has suffered loss of consortium and damage to the husband-wife relationship, including loss of affection, solace, comfort, companionship, society, assistance, sexual relations, emotional support, love and felicity necessary to a successful marriage. He has suffered mental anguish, grief, and sorrow as a result of the illness from which his wife suffers and is likely to continue to suffer for a long time in the future. For these losses, Plaintiff Kristian Dickey requests that the Judge and Jury award him fair compensation for his injuries and losses in an amount to be determined by the jury at the trial of this lawsuit.

32. As a result of the illness from which Marcy Berkley Dickey suffers, Plaintiff Dashun Dickey has suffered pecuniary damages including losses of care, maintenance, support, services, advice, counsel and contributions of a pecuniary value that he would, in reasonable probability, have received from his mother were it not for her medical condition. In addition, he has suffered loss of consortium and damage to the mother-son relationship, including loss of affection, solace, comfort, companionship, society, assistance, emotional support, love and felicity necessary to a beneficial mother-son relationship. He has suffered mental anguish, grief, and sorrow as a result of the illness from which his mother suffers and is likely to continue to suffer for a long time in the future. For these losses, Plaintiff Dushun Dickey requests that the Judge and Jury

award him fair compensation for his injuries and losses in an amount to be determined by the jury at the trial of this lawsuit.

33. As a result of the brain hemorrhage suffered by Marcy Berkley Dickey, Plaintiffs request that the Judge and Jury award them fair compensation for their injuries and losses in an amount to be determined by the jury at the trial of this lawsuit.

34. The Plaintiffs believe that fair compensation for their injuries would be in excess of the jurisdictional limits of the court.

8. EXEMPLARY AND ADDITIONAL DAMAGES

35. The acts, omissions, breaches of warranty, or distribution/marketing of defective products, as set forth above, were committed by Defendants with a mental state constituting malice as that term is defined in TEX.CIV.PRAC.CODE. § 41.001. Such gross negligence and malice was authorized by such Defendants; ratified by such Defendants; committed by a managerial agent of such Defendants; committed by an unfit employee of such Defendants whom such Defendants were reckless in employing; and/or were committed in the performance of a non-delegable duty owed by such Defendants. Such malice warrants the imposition of exemplary damages and was a proximate and producing cause of injury to Plaintiffs.

36. Plaintiffs seek exemplary damages in such an amount as may be found to be proper under the facts and circumstances.

37. Plaintiffs also seek additional damages suffered as a result of Defendants' conduct in violation of the Texas Deceptive Trade Practices Act that was committed knowingly.

**9. CONDITIONS PRECEDENT, CAUSATION, REQUEST FOR JURY,
AND REQUESTS FOR DISCLOSURES**

38. All conditions precedent to the filing of this lawsuit have been performed or have occurred.

39. Each of the aforementioned acts, omissions, breaches of warranty, and/or defective products of Defendants was a proximate and/or producing cause of injury to Plaintiffs.

40. Plaintiffs hereby request that this lawsuit be tried to a jury of Plaintiffs' peers as permitted by the Constitution and laws of the state of Texas. The appropriate jury fee is being tendered herewith to the appropriate authorities.

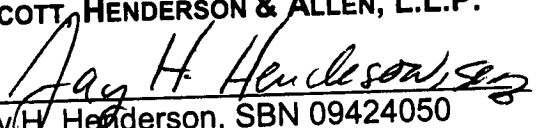
41. Under the authority of Texas Rule of Civil Procedure 194.3, Plaintiffs request the Defendants disclose, within 50 days of the service of this Petition and request, the information or material described in the referenced rule.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for judgment against all Defendants for compensatory damages with costs and interest, both pre-judgment and post-judgment; and against Defendants for exemplary damages. Plaintiffs also pray for such other and further relief as they may show themselves entitled.

Respectfully submitted,

CRUSE, SCOTT, HENDERSON & ALLEN, L.L.P.

By:


Jay H. Henderson, SBN 09424050
Stephen R. Bailey, SBN 01536660
Matthew M. Prewett, SBN 00788223
2777 Allen Parkway, 7th Floor
Houston, Texas 77019
713-650-6600 (Telephone)
713-650-1720 (Telecopier)

Mr. David P. Willis
State Bar No. 21643500
Willis Law Firm
1221 McKinney, Suite 3333
Houston, Texas 77010
(713) 654-4040 (Telephone)
(713) 654-4050 (Telecopier)

ATTORNEYS FOR PLAINTIFFS,
MARCY BERKLEY DICKEY, INDIVIDUALLY
AND AS NEXT FRIEND OF DASHUN
DICKEY, AND KRISTIAN DICKEY

Of Counsel:

Edward F. Blizzard, #02495000
J. Scott Nabers, #14769250
Blizzard, McCarthy & Nabers, L.L.P.
440 Louisiana Street, Suite 1710
Houston, Texas 77002
(713) 844-3750 (Telephone)
(713) 844-3755 (Telecopier)

Kenneth T. Fibich, #06952600
Russell S. Briggs, #02987720
Fibich, Hampton, Leebron & Garth, L.L.P.
Two Houston Center
909 Fannin Street, Suite 800
Houston, Texas 77010
(713) 751-0025 (Telephone)
(713) 751-0030 (Telecopier)

F. Kenneth Bailey, Jr., #24006782
Robert A. Schwartz, #17869670
Williams Bailey Law Firm, L.L.P.
8441 Gulf Freeway, Suite 600
Houston, Texas 77017
(713) 230-2200 (Telephone)
(713) 643-6226 (Telecopier)

CRUSE, SCOTT, HENDERSON & ALLEN, L.L.P.

ATTORNEYS AT LAW
2777 ALLEN PARKWAY
7TH FLOOR

HOUSTON, TEXAS 77019-2133

(713) 650-6600

FAX (713) 650-1720

www.crusescott.com

MATTHEW M. PREWETT
PARTNER

May 23, 2005

BY
DEPUTY
05 MAY 23 PM 4:40
HARRIS COUNTY CLERK
CHARLES BACARISSE

BY HAND DELIVERY

Mr. Charles Bacarisse
Harris County District Clerk
Harris County Civil Courts Building
301 Fannin, Room 101
Houston, Texas 77002

2005 - 34601

Re: Cause No. _____; *Marcy Berkley Dickey, Individually and As Next Friend of Dashun Dickey, and Kristian Dickey vs. Metabolife International, Inc., Wal-Mart Stores, Inc., Muscletech Research Development, Inc., and Rusche Properties I LLC*; in the _____ Judicial District Court of Harris County, Texas

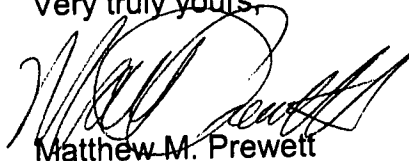
Dear Mr. Bacarisse:

Enclosed for filing with the Court are the original and eight copies of **Plaintiffs' Original Petition and Requests for Disclosures**, the **Civil Case Information Sheet**, and the **Civil Process Request** form in the above-referenced matter. Also enclosed is our **firm check** in the amount of \$230.00 covering the filing fee for the petition, the issuance of four out-of-county citations, and the cost of the jury fee. In your usual manner, please notify me of the date and time of filing.

Additionally, please issue citations for two out-of-county Defendants and two for service upon the Secretary of State of Texas, as indicated on the enclosed Civil Process Request form, and return the citations to my office for service.

Thank you in advance for your assistance.

Very truly yours,


Matthew M. Prewett

MMP:jc
Enclosures

CAUSE NO. 200534601

RECEIPT NO. 233019

0.00

MTA

05-23-2005

TR # 71920862

PLAINTIFF: DICKEY, MARCY BERKLEY (IND AND ANF OF DASHUN DICKE

vs.

DEFENDANT: METABOLIFE INTERNATIONAL INC

In The 113th
Judicial District Court
of Harris County, Texas
113TH DISTRICT COURT
Houston, TX

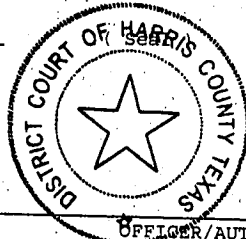
CITATION

THE STATE OF TEXAS
County of HarrisTO: RUSCHE PROPERTIES I LLC BY SERVING ITS REGISTERED AGENT E V BONNER JR
2433 BALDWIN BLVD. CORPUS CHRISTI TX 78408Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSUREThis instrument was filed on the 23rd day of May, 2005, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 25th day of May, 2005, under my hand and seal of said Court.

Issued at request of:
HENDERSON, JAY H.
2777 ALLEN PKWY 7 FL
HOUSTON, TX 77019
Tel: (713) 650-6600
Bar No.: 9424050CHARLES BACARISSE, District Clerk
Harris County, Texas
301 Fannin
Houston, Texas 77002
(P.O. Box 4951, Houston, Texas 77210)

BY

Deputy BRANTLEY, FURSHILLA U1K/Q8K/7209895

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at 9:30 o'clock A .M., on the 8th day of June, 2005.Executed at (address) 4433 Baldwin, Corpus Christi inMexes County at 1:59 o'clock P .M., on the 15th day of June, 2005, by delivering to Sam L. Lussan Pres. of Rusche Properties I, LLC defendant, in person, a true copy of this Citation together with the accompanying 1 copy(ies) of the Petition

attached thereto and I endorsed on said copy of the Citation the date of delivery.

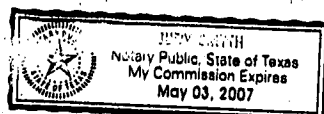
To certify which I affix my hand officially this 16th day of June, 2005.

Fee: \$

Kelli Owens
AffiantMexes County, Texas
Kelli OwensOn this day, Kelli Owens, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.SWORN TO AND SUBSCRIBED BEFORE ME, on this 16th day of June, 2005

Notary Public

N. INT. CITR. P



AFFIDAVIT

STATE OF TEXAS §

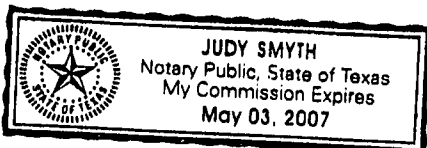
COUNTY OF NUECES §

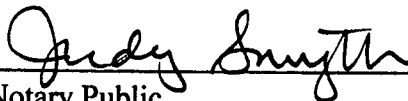
I, the undersigned, make the following representations to the Judge of said court, to induce him to enter an order authorizing me to serve citations and/or notices issued from his court pursuant to Rule 103, Texas Rules of Civil Procedure. I have personal knowledge of the facts and statement contained in this affidavit and each are true and correct.

1. I am not less than 18 years of age.
2. I am an individual residing in the State of Texas.
3. I will neither request the authority to nor will I serve any process in any case in which I am a party or have an interest in the outcome of the case.
4. I have never been convicted of a felony or misdemeanor involving moral turpitude in any state or federal jurisdiction.
5. I have studied and am familiar with the Texas Rules of Civil Procedure, Vernon's Texas Civil Statutes, and Civil Remedies Code and all other applicable rules and statutes relating to service of citations and notices.


KELL DOWENS

SIGNED TO AND SUBSCRIBED BEFORE ME, the undersigned Notary Public on this the 16th day of June, 2005.




Notary Public

AFFIDAVIT OF SERVICE

Came to hand on the 8th day of June , 2005, at 11:30 o'clock am.
Cause No. 200534601

Executed at 1019 Brazos Street, Suite 220 Austin, Texas 78701
within the County of Travis at 10:29 o'clock am on the 9th day
of June , 2005, by delivering to the within named:

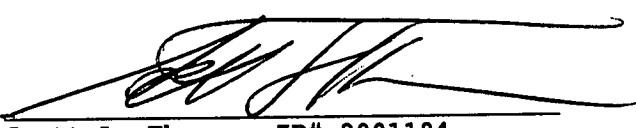
METABOLIFE INTERNATIONAL INC.,
by delivering to the Texas Secretary of State, by delivering to his designated
agent, HELEN LUPERCIO, in person, true duplicate copies of this citation,
Plaintiff's Original Petition, and Request for Disclosure, having first
endorsed upon both copies of the citations the date of delivery and
tendering the sum of \$50.00 to the Secretary of State.

I am not a party to or interested in the outcome of the suit referenced above.
I am authorized by written order to serve citation and other notices. I am not
less than eighteen (18) years of age.

Service Fee \$

MARCY BERKLEY DICKEY,
INDIVIDUALLY AND AS NEXT FRIEND
OF DASHUN DICKEY, AND KRISTIAN
DICKEY Plaintiff

V.
METABOLIFE INTERNATIONAL, INC.,
WAL-MART STORES, INC., MUSCLETECH
RESEARCH DEVELOPMENT, INC., AND
RUSCHE PROPERTIES I LLC, Defendant

By: 
Scott L. Thomas ID# 2001184
(Authorized Person)


THOMAS PROCESS
809 Rio Grande Street
Suite 103
Austin, Texas 78701
(512) 320-8330

VERIFICATION

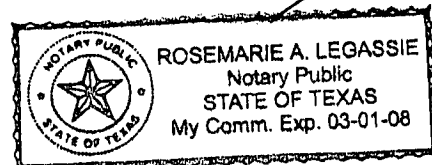
STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, A NOTARY PUBLIC, on this day personally appeared
Scott L. Thomas , known to me to be the person whose name
is subscribed to the foregoing document and, being by me first duly sworn,
declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 9th day of
June , A.D., 2005.


NOTARY PUBLIC, STATE OF TEXAS

26964/2005004687



CAUSE NO. 200534601

RECEIPT NO. 233019

0.00

MTA

05-23-2005

TR # 71920857

PLAINTIFF: DICKEY, MARCY BERKLEY (IND AND ANF OF DASHUN DICKE

vs.

DEFENDANT: METABOLIFE INTERNATIONAL INC

In The 113th
Judicial District Court
of Harris County, Texas
113TH DISTRICT COURT
Houston, TX

CITATION (SECRETARY OF STATE FOREIGN CORPORATION)

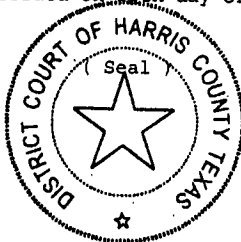
THE STATE OF TEXAS
County of HarrisTO: METABOLIFE INTERNATIONAL INC (CORPORATION) BY SERVING THE SECRETARY
OF STATE OF TEXAS CITATIONS UNIT P O BOX 12079 AUSTIN TEXAS 78711-2079
FORWARD TO
5070 SANTA FE STREET SAN DIEGO CA 92109FILED
CHARLES BACARISSE
DISTRICT CLERK
HARRIS COUNTY, TEXAS
05 JUN 15 PM 2:00Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSUREThis instrument was filed on the 23rd day of May, 2005, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 25th day of May, 2005, under my hand and seal of said Court.

Issued at request of:

HENDERSON, JAY H.
2777 ALLEN PKWY 7 FL
HOUSTON, TX 77019
Tel: (713) 650-6600
Bar No.: 9424050CHARLES BACARISSE, District Clerk
Harris County, Texas
301 Fannin
Houston, Texas 77002
(P.O. Box 4651 Houston, Texas 77210)

BY

Deputy BRANTLEY, FURSHILLA U1K/Q8K/7209895

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at 11:30 o'clock A.M., on the 8th day of June, 2005.

Executed at (address) _____ in _____

County at _____ o'clock _____ M., on the _____ day of _____,

by delivering to _____ defendant, in person, a true copy of this Citation together with the accompanying _____ copy(ies) of the _____

attached thereto and I endorsed on said copy of the Citation the date of delivery.

To certify which I affix my hand officially this _____ day of _____, _____.

Fee: \$ _____

_____ of _____ County, Texas

Affiant _____

By _____
Deputy

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, _____.

Notary Public _____

AFFIDAVIT OF SERVICE

Came to hand on the 8th day of June , 2005, at 11:30 o'clock am.
Cause No. 200534601

Executed at 1019 Brazos Street, Suite 220 Austin, Texas 78701
within the County of Travis at 10:29 o'clock am on the 9th day
of June , 2005, by delivering to the within named:

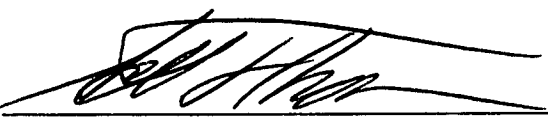
MUSCLETECH RESEARCH AND DEVELOPMENT INC.,
by delivering to the Texas Secretary of State, by delivery to his designated
agent, HELEN LUPERCIO, in person, true duplicate copies of this Citation,
Plaintiff's Original Petition, and Request for Disclosure, having first
endorsed upon both copies of the citations the date of delivery, and tendering
the sum of \$50.00 to the Secretary of State.

I am not a party to or interested in the outcome of the suit referenced above.
I am authorized by written order to serve citation and other notices. I am not
less than eighteen (18) years of age.

Service Fee \$

MARCY BERKLEY DICKEY,
INDIVIDUALLY AND AS NEXT FRIEND
OF DASHUN DICKEY, AND KRISTIAN
DICKEY Plaintiff

V.
METABOLIFE INTERNATIONAL, INC.,
WAL-MART STORES, INC., MUSCLETECH
RESEARCH DEVELOPMENT, INC., AND
RUSCHE PROPERTIES I LLC, Defendant

By: 
Scott L. Thomas ID# 2001184
(Authorized Person)

THOMAS PROCESS
809 Rio Grande
Suite 103
Austin, Texas
(512) 320-8333

FILED
CLERK
DISTRICT CLERK
HARRIS COUNTY, TEXAS

05 JUN 15 PM 2:00

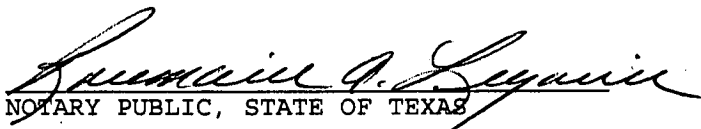
BY:

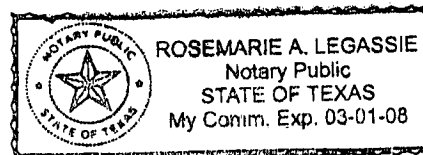
VERIFICATION

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, A NOTARY PUBLIC, on this day personally appeared
Scott L. Thomas , known to me to be the person whose name
is subscribed to the foregoing document and, being by me first duly sworn,
declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 9th day of
June , A.D., 2005.


NOTARY PUBLIC, STATE OF TEXAS



CAUSE NO. 200534601

RECEIPT NO. 233019
05-23-2005

0.00

MTA

TR # 71920859

PLAINTIFF: DICKEY, MARCY BERKLEY (IND AND ANF OF DASHUN DICKE
vs.
DEFENDANT: METABOLIFE INTERNATIONAL INCIn The 113th
Judicial District Court
of Harris County, Texas
113TH DISTRICT COURT
Houston, TX

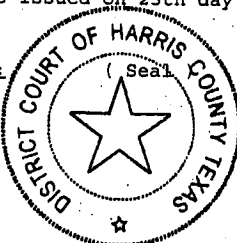
CITATION (SECRETARY OF STATE FOREIGN CORPORATION)

THE STATE OF TEXAS
County of HarrisTO: MUSCLETECH RESEARCH AND DEVELOPMENT INC (CORPORATION) BY SERVING THE
SECRETARY OF STATE OF TEXAS CITATIONS UNIT P O BOX 12079 AUSTIN TEXAS
2079 FORWARD TO
7050 TELFORD WAY UNIT 100 MISSISSAUGA ONTARIO CANADA L5S 1V7FILED
CHARLES BACARISSE
DISTRICT CLERK
HARRIS COUNTY, TEXAS
05 JUN 15 PM 2:00Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSUREThis instrument was filed on the 23rd day of May, 2005, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 25th day of May, 2005, under my hand and seal of said Court.

Issued at request of:
HENDERSON, JAY H.
2777 ALLEN PKWY 7 FL
HOUSTON, TX 77019
Tel: (713) 650-6600
Bar No.: 9424050CHARLES BACARISSE, District Clerk
Harris County, Texas
301 Fannin Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)BY [Signature]
Deputy BRANTLEY, FURSHILLA UIK/Q8K/7209895

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at 11:30 o'clock A. M., on the 23 day of JUN, 2005.

Executed at (address) _____ in _____

County at _____ o'clock _____ M., on the _____ day of _____,

by delivering to _____ defendant, in person, a true copy of this Citation together with the accompanying _____ copy(ies) of the Petition

attached thereto and I endorsed on said copy of the Citation the date of delivery.

To certify which I affix my hand officially this _____ day of _____.

Fee: \$ _____

_____ of _____ County, Texas

Affiant

By _____ Deputy

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____.

Notary Public

N.INT.SECC.P

AFFIDAVIT OF SERVICE

Came to hand on the 8th day of June , 2005, at 11:30 o'clock am.
Cause No. 200534601

Executed at 701 Brazos Street, Suite 1050 Austin, Texas 78701
within the County of Travis at 10:15 o'clock am on the 9th day
of June , 2005, by delivering to the within named:

WAL-MART STORES, INC.
by delivering to its Registered Agent, CORPORATION SERVICE COMPANY,
by delivering to its designated agent, CONNIE HARRIS, in person, a true copy
of this Citation, together with Plaintiff's Original Petition attached, and
Request for Disclosure, having first endorsed upon such copy of the citation
the date of delivery.

I am not a party to or interested in the outcome of the suit referenced above.
I am authorized by written order to serve citation and other notices. I am not
less than eighteen (18) years of age.

Service Fee \$

MARCY BERKLEY DICKEY,
INDIVIDUALLY AND AS NEXT FRIEND
OF DASHUN DICKEY, AND KRISTIAN
DICKEY Plaintiff

V.
METABOLIFE INTERNATIONAL, INC.,
WAL-MART STORES, INC., MUSCLETECH
RESEARCH DEVELOPMENT, INC., AND
RUSCHE PROPERTIES I LLC, Defendant

By:

Scott L. Thomas ID# 26963
(Authorized Person)

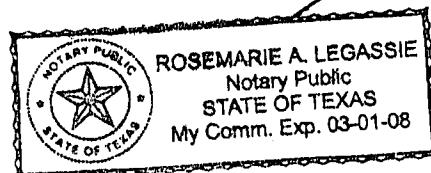
THOMAS PROCESSING
809 Rio Grande Street
Suite 103
Austin, Texas 78701
(512) 320-8330

VERIFICATION

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, A NOTARY PUBLIC, on this day personally appeared
Scott L. Thomas , known to me to be the person whose name
is subscribed to the foregoing document and, being by me first duly sworn,
declared that the statements therein contained are true and correct.
Given under my hand and seal of office this 9th day of
June , A.D., 2005.

NOTARY PUBLIC, STATE OF TEXAS



26963/2005004685

RECEIPT NUMBER 233019 0.00
TRACKING NUMBER 71920852 MTA

CAUSE NUMBER 200534601

PLAINTIFF: DICKEY, MARCY BERKLEY (IND AND ANF OF DASHUN DICKE
VS.
DEFENDANT: METABOLIFE INTERNATIONAL INC

In The 113th
Judicial District Court of
Harris County, Texas

CITATION CORPORATE

THE STATE OF TEXAS
County of Harris

TO: WAL-MART STORES INC (CORPORATION) BY SERVING CORPORATION SERVICE
COMPANY
800 BRAZOS STREET AUSTIN TX 78701

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

FILED
CHARLES BACARISSE
DISTRICT CLERK
HARRIS COUNTY, TEXAS
05 JUN 15 PM 2:00

This instrument was filed on the 23rd day of May, 2005 in the
above cited cause number and court. The instrument attached describes the claim against you.

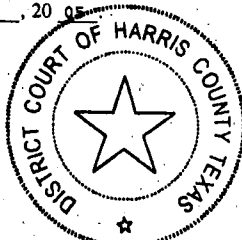
YOU HAVE BEEN SUED; you may employ an attorney. If you or your attorney do not file a written answer with the
District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were
served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This Citation was issued under my hand and seal of said Court, at Houston, Texas, this 25th day of
May, 2005.

SEAL

Issued at request of:
HENDERSON, JAY H.
2777 ALLEN PKWY 7 FL
HOUSTON, TX 77019
Tel: (713) 650-6600
Bar Number: 9424050



CHARLES BACARISSE, District Clerk
Harris County, Texas
301 Fannin, Houston, Texas 77002
P.O. Box 4651, Houston, Texas 77210

By: *[Signature]*
Deputy District Clerk BRANTLEY, FURSHILLA

OFFICER/AUTHORIZED PERSON RETURN

I received this citation on the 25th day of June, 2005, at 11:30 o'clock P.M., endorsed
the date of delivery thereon, and executed it at _____
(street address) (city)

in _____ County, Texas on the _____ day of _____, 20____, at _____ o'clock _____ M.,
by delivering to _____, by delivering to its
(the defendant corporation named in citation)

_____, in person, whose name is _____
(registered agent, president, or vice-president)

a true copy of this citation, with a copy of the _____ Petition attached,
(description of petition, e.g., "Plaintiffs Original")

and with accompanying copies of _____
(additional documents, if any, delivered with the petition)

I certify that the facts stated in this return are true by my signature below on the _____ day of _____, 20____.

FEE: \$ _____

By: _____
(signature of officer)

Printed Name: _____

As Deputy for: _____
(printed name & title of sheriff or constable)

Affiant Other Than Officer

On this day, _____, known to me to be the person whose signature
appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was
executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____, 20____.

Notary Public

RECEIPT NUMBER 236577 0.00
TRACKING NUMBER 71935987 CIV

CAUSE NUMBER 200534601

PLAINTIFF: DICKEY, MARCY BERKLEY (IND AND ANF OF DASHUN DICKE
vs.
DEFENDANT: METABOLIFE INTERNATIONAL INC

In The 113th
Judicial District Court of
Harris County, Texas

THE STATE OF TEXAS
County of Harris

CITATION CORPORATE

TO: WAL-MART STORES INC (CORPORATION) BY SERVING CT CORPORATION SYSTEM
350 NORTH ST PAUL DALLAS TX 75201

Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

This instrument was filed on the 23rd day of May, 20 05, in the
above cited cause number and court. The instrument attached describes the claim against you.

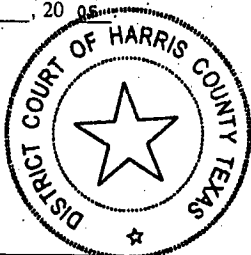
YOU HAVE BEEN SUED; you may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This Citation was issued under my hand and seal of said Court, at Houston, Texas, this 29th day of
June, 20 05

SEAL

Issued at request of:
PREWETT, MATTHEW MILES
2777 ALLEN PKWY 7 FL
HOUSTON, TX 77019
Tel: (713) 650-6600
Bar Number: 788223



CHARLES BACARISSE, District Clerk
Harris County, Texas
301 Fannin, Houston, Texas 77002
P.O. Box 4651, Houston, Texas 77210

By: [Signature]
Deputy District Clerk BRANTLEY, FURSHILLA

OFFICER/AUTHORIZED PERSON RETURN

I received this citation on the 7th day of July, 2005, at 12:30 o'clock P. M., endorsed
the date of delivery thereon, and executed it at 350 NORTH ST. PAUL at 2900, DALLAS,
(street address) (city)

in DALLAS County, Texas on the 7 day of July, 2005, at 2:30 o'clock P. M.,
by delivering to WAL-MART STORES INC., by delivering to its
(the defendant corporation named in citation)

Reg AGENT, in person, whose name is C.T. CORPORATION System
(registered agent) president, or vice-president).

a true copy of this citation, with a copy of the plaintiff's original petition Petition attached,
(description of petition, e.g., "Plaintiffs Original")

and with accompanying copies of Request For Disclosure
(additional documents, if any, delivered with the petition)

I certify that the facts stated in this return are true by my signature below on the 7th day of July, 2005.

FEE: \$

By: Duke Roberts
(signature of officer)

Printed Name: DUKE ROBERTS

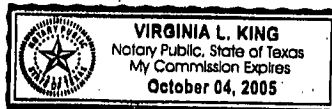
Affiant Other Than Officer

As Deputy for: _____
(printed name & title of sheriff or constable)

On this day, DUKE ROBERTS, known to me to be the person whose signature
appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was
executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this 7 day of July, 20 05

Virginia L. King
Notary Public



CIVIL PROCESS REQUEST

ASSESSED
ENTERED

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING
FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: 2005-34601CURRENT COURT: 113thTYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): Original Petition & Request for DisclosureFILE DATE OF MOTION: 5/23/05
Month/ Day/ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: Wal-Mart Stores Inc.ADDRESS: 350 North St. Paul, Dallas, TX 75201AGENT, (if applicable): CT Corporation SystemTYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): citation

SERVICE BY (check one):

☐ ATTORNEY PICK-UP☐ CONSTABLE☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____

Phone: _____

☐ MAIL☐ CERTIFIED MAIL☐ PUBLICATION:

Type of Publication:

☐ COURTHOUSE DOOR, or☐ NEWSPAPER OF YOUR CHOICE:☒ OTHER, explain please return citation to Mach 5 Personnel to be returned to our office.

2. NAME: _____

ADDRESS: _____

AGENT, (if applicable): _____

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): _____

SERVICE BY (check one):

☐ ATTORNEY PICK-UP☐ CONSTABLE☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____

Phone: _____

☐ MAIL☐ CERTIFIED MAIL☐ PUBLICATION:

Type of Publication:

☐ COURTHOUSE DOOR, or☐ NEWSPAPER OF YOUR CHOICE: _____☐ OTHER, explain _____

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: Matthew M. Prewett TEXAS BAR NO./ID NO. 00788223MAILING ADDRESS: 2777 Allen Parkway, 7th FloorPHONE NUMBER: 713 650-6600 FAX NUMBER: 713 650-1720
area code phone number area code fax numberEMAIL ADDRESS: mprewett@crusescott.com

5721.2

RECEIPT NUMBER 237275 0.00
 TRACKING NUMBER 71937102 CIV

CAUSE NUMBER 200534601

PLAINTIFF: DICKEY, MARCY BERKLEY (IND AND ANF OF DASHUN DICKE
 vs.
 DEFENDANT: METABOLIFE INTERNATIONAL INC

In The 113th
 Judicial District Court of
 Harris County, Texas

THE STATE OF TEXAS
 County of Harris

CITATION CORPORATE

TO: ANUM ENTERPRISES INC (CORPORATION) BY SERVING ITS REGISTERED AGENT
 AFTAB AZIZ
 13575 ALIEF CLODINE HOUSTON TX 77082

FILED
 CHARLES BACARISSE
 DISTRICT CLERK
 HARRIS COUNTY, TEXAS
 05 AUG -8 AM 8:51

Attached is a copy of FIRST AMENDED ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

This instrument was filed on the 1st day of July, 20 05, in the
 above cited cause number and court. The instrument attached describes the claim against you.

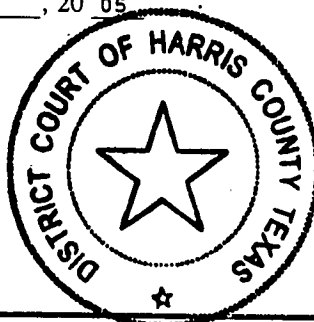
YOU HAVE BEEN SUED; you may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This Citation was issued under my hand and seal of said Court, at Houston, Texas, this 5th day of
July, 20 05

SEAL

Issued at request of:
 HENDERSON, JAY H.
 2777 ALLEN PKWY 7 FL
 HOUSTON, TX 77019
 Tel: (713) 650-6600
 Bar Number: 9424050



CHARLES BACARISSE, District Clerk
 Harris County, Texas
 301 Fannin, Houston, Texas 77002
 P.O. Box 4651, Houston, Texas 77210

By: [Signature]
 Deputy District Clerk BRANTLEY, FURSHILLA

OFFICER/AUTHORIZED PERSON RETURN

I received this citation on the _____ day of _____, 20____, at _____ o'clock ____ M., endorsed
 the date of delivery thereon, and executed it at _____,
 (street address) (city)

in _____ County, Texas on the _____ day of _____, 20____, at _____ o'clock ____ M.,
 by delivering to _____, by delivering to its
 (the defendant corporation named in citation)

_____, in person, whose name is _____,
 (registered agent, president, or vice-president)

a true copy of this citation, with a copy of the _____ Petition attached,
 (description of petition, e.g., "Plaintiffs Original")

and with accompanying copies of _____
 (additional documents, if any, delivered with the petition)

I certify that the facts stated in this return are true by my signature below on the _____ day of _____, 20____.

FEE: \$ _____

By: _____
 (signature of officer)

**AFFIDAVIT
 ATTACHED**

CRUSE, SCOTT, HENDERSON & ALLEN, L.L.P.ATTORNEYS AT LAW
2777 ALLEN PARKWAY
7TH FLOOR

HOUSTON, TEXAS 77019-2183

(713) 650-6600

FAX (713) 650-1720

www.cruse-scott.com

MATTHEW M. PREWETT
PARTNER

July 1, 2005

BY
DEPUTY
05 JUL - 1 PM 5:23
HARRIS COUNTY CLERK
CHARLES BACARISSE
FILED**BY HAND DELIVERY**Mr. Charles Bacarisse
Harris County District Clerk
Harris County Civil Courts Building
301 Fannin, Room 101
Houston, Texas 77002Re: Cause No. 2005-34601; *Marcy Berkley Dickey, Individually and As Next Friend of Dashun Dickey, and Kristian Dickey vs. Metabolife International, Inc., Wal-Mart Stores, Inc., Muscletech Research Development, Inc., and Rusche Properties I LLC*; in the 113th Judicial District Court of Harris County, Texas

Dear Mr. Bacarisse:

Enclosed for filing with the Court are the original and eight copies of **Plaintiffs' First Amended Original Petition and Requests for Disclosures**, the **Civil Case Information Sheet**, and the **Civil Process Request** form in the above-referenced matter. Also enclosed is our **firm check** in the amount of \$8.00 covering the fee for the issuance of one in-county-citation. In your usual manner, please notify me of the date and time of filing.

Additionally, please rush issuance of the citation for Defendant, Anum Enterprises, Inc., as the statute of limitations runs on July 11, 2005. I have indicated on the enclosed Civil Process Request form the registered agent. Also, upon issuance please return the citations to my office for service.

Thank you in advance for your assistance.

Very truly yours,


Matthew M. PrewettMMP/jns
Enclosures

CAUSE NO. 2005-34601

MARCY BERKLEY DICKEY,
INDIVIDUALLY AND AS NEXT FRIEND
OF DASHUN DICKEY, AND
KRISTIAN DICKEY

Plaintiffs

VS.

METABOLIFE INTERNATIONAL, INC.,
WAL-MART STORES, INC.,
MUSCLETECH RESEARCH
DEVELOPMENT, INC.,
RUSCHE PROPERTIES I LLC, AND
ANUM ENTERPRISES, INC.

Defendants

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

113TH JUDICIAL DISTRICT

05 JUL - 1 PM 5:23
HARRIS COUNTY, TEXAS
CLERK OF DISTRICT COURT
FILED
BY DEPUTY

ASSIGNED
ENTERED
VERIFIED

PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION
AND REQUESTS FOR DISCLOSURES

COME NOW Plaintiffs MARCY BERKLEY DICKEY, INDIVIDUALLY AND AS NEXT FRIEND OF DASHUN DICKEY, AND KRISTIAN DICKEY, complaining of METABOLIFE INTERNATIONAL, INC., WAL-MART STORES, INC., MUSCLETECH RESEARCH AND DEVELOPMENT, INC., RUSCHE PROPERTIES I LLC, and ANUM ENTERPRISES, INC. Defendants, and for cause of action against the Defendants would show unto the Court as follows:

I.

1. Plaintiffs assert that this lawsuit should fall under Level 3 discovery, as set out in Rule 190.4 of the Texas Rules of Civil Procedure.

II.

2. Plaintiffs are resident citizens of Houston, Harris County, Texas, and reside at 1620 Enclave Parkway, #2901, Houston, Texas 77077. Plaintiffs were living in Texas at the time their causes of action accrued. Venue is proper in Harris County, Texas, because the Plaintiffs reside there and all or part of the causes of action alleged in this pleading occurred in Harris County, Texas.

3. Defendant, Wal-Mart Stores, Inc., is a retail products corporation that marketed the products Metabolife 356 and Hydroxycut. Wal-mart Stores, Inc., at all times herein mentioned, was and is a corporation organized and existing under the laws of a state other than the state of Texas. It has done and is doing business in the state of Texas, and this lawsuit arose out of Defendant's business in this state. Defendant is duly authorized to do business in the state of Texas. Said Defendant may be served with process by delivering Petition and Citation to:

CT Corporation System
350 North St. Paul
Dallas, TX 75201

4. Defendant, Metabolife International, Inc., manufactures and markets the product Metabolife 356. Metabolife International, Inc., at all times herein mentioned, was a corporation or other business entity organized and existing under the laws of the State of California. It has done and is doing business in the state of Texas, and this lawsuit arose out of Defendant's business in this state, but Defendant does not maintain a regular place of business in this state or a designated agent for service of process. Tex. Civ. Prac. & Rem Code §17.044 (b); Tex. Bus. Corp. Act art. 8.10(b); Tex. Rev. Civ. Stat. Ann. Art. 1396-8.09 (B). This Defendant may be served with process by

delivering Petition and Citation to the Secretary of State under Tex. Civ. Prac. & Rem. Code Sec. 17.044, and the Secretary of State, forwarding Petition and Citation to this Defendant's home office at:

Metabolife International, Inc.
5070 Santa Fe Street
San Diego, California 92109

5. Defendant, MuscleTech Research and Development, Inc., manufactures and markets the product Hydroxycut. MuscleTech Research and Development, Inc. was a corporation or other business entity organized and existing under the laws of Canada. It has done and is doing business in the state of Texas, and this lawsuit arose out of Defendant's business in this state, but Defendant does not maintain a regular place of business in this state or a designated agent for service of process. Tex. Civ. Prac. & Rem Code §17.044 (b); Tex. Bus. Corp. Act art. 8.10(b); Tex. Rev. Civ. Stat. Ann. Art. 1396-8.09 (B). This Defendant may be served with process by delivering Petition and Citation to the Secretary of State under Tex. Civ. Prac. & Rem. Code Sec. 17.044, and the Secretary of State, forwarding Petition and Citation to this Defendant's principal place of business as follows:

MuscleTech Research and Development, Inc.
7050 Telford Way, Unit 100
Mississauga, Ontario, Canada L5S 1V7

6. Defendant, Rusche Properties I LLC, is a convenience store and gas station that marketed the products Metabolife 356 and Hydroxycut. Rusche Properties I LLC, at all times herein mentioned, was and is an LLC organized and existing under the laws of the state of Texas. It has done and is doing business in the state of Texas and this lawsuit arose out of Defendant's business in this state. Defendant is duly authorized

to do business in the state of Texas. Said Defendant may be served with process by delivering Petition and Citation to Defendant's registered agent for service:

E. V. Bonner, Jr.
2433 Baldwin Blvd.
Corpus Christi, TX 78408

7. Defendant, Anum Enterprises, Inc., is/was the owner and/or operator of a convenience store and gas station that marketed the products Metabolife 356 and Hydroxycut. Anum Enterprises, Inc., at all times herein mentioned, was a corporation or other business entity organized and existing under the laws of the state of Texas. It has done and is doing business in the state of Texas and this lawsuit arose out of Defendant's business in this state. Defendant is duly authorized to do business in the state of Texas. Said Defendant may be served with process by delivering Petition and Citation to Defendant's registered agent for service:

Aftab Aziz
13575 Alief Clodine
Houston, TX 77082

III. FACTUAL BACKGROUND

8. This lawsuit has been made necessary by the conduct of the Defendants in connection with the design, manufacture, and marketing of various over-the-counter herbal concoctions, all of which possess a common denominator in that they contain "herbal" ephedrine or ephedrine alkaloids ("ephedrine"). These products are subject to the Dietary Supplement Health and Education Act of 1994, which limits the regulatory authority of the Federal Food and Drug Administration in verifying the safety and efficacy of ephedrine-containing dietary supplements. Thus, the dietary supplement

industry is responsible for its own product design, safety and efficacy testing, marketing, and post-marketing safety surveillance.

9. Defendants, as members of the dietary supplement industry, aggressively and deceptively market "natural" products that contain ephedrine and other potentially hazardous substances. Defendants, individually and collectively, have participated in schemes to convince American consumers that chronic health conditions, including obesity, can be successfully treated in the long-term by the use of dietary supplements that contain ephedrine. Likewise, Defendants have marketed their "natural" products as being a safe and effective means of providing energy, exercise endurance, and stamina to individuals who consume these products. Thus, Defendants have convinced thousands of American consumers that the benefits of using these ephedrine-containing products outweigh their risks.

10. Unfortunately, Defendants, individually and collectively, have failed in their responsibility to conduct adequate testing to fairly and reasonably establish the safety and efficacy of these ephedrine-containing products. Defendants' primary focus for testing has been short-term efficacy testing, and safety testing has largely been ignored. Defendants have designed these products so that they include alleged "natural" substances that have the propensity to cause harm to individuals who ingest these products. Further, Defendants have not conducted and do not conduct adequate post-marketing safety surveillance, which is an essential tool in the quest for determining the safety of products that are ingested by thousands of American consumers daily. In spite of numerous reports of serious side effects that are the likely result of using their products, including reports by the Food and Drug Administration, Defendants have